IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE SIXTEENTH DAY OF AUGUST
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE B.PRAKASH RAO

WRIT PETITION NO : 13105 of 2004

Between:

The Managing Committee of Anjuman Imdad-E-Islam Ahala Sunathul Jamiya Majid, Mandapeta, Rep. by its President Mr. Sayyad Ahamad Valli (Babji), S/o. Sayyad Nabi,
age about 36 Years, R/o. Rajaratna Road, 2nd Street, Mandapeta, East Godavari District.

..... PETITIONER

AND

1. The A.P. State Wakf Board, Rep. by its Chief Executive Officer, Haj House,Public Garden Road, Nampally, Hyderabad.
2 Mr. Syed Saleem Basha, S/o. Late Superintendent, A.P. State Wakf Board, Haj House, Public Garden Road, Nampally, Hyderab

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ order or direction more particularly one in the nature of Writ of Mandamus declaring the action of the 1st respondent in issuing proceedings dt. 20-7-2004 as published in Eenadu dt. 23-7-2004 on superceding the present Managing Committee to the Jamia Mosque, Mandapeta, East Godavari and asking the 2nd respondent to take charge of the affairs of the Mosque as arbitrary, illegal, violative of principles of natural justice and the provisions of the Wakf Act, 1995 and also Articles 14 and 16 of the Constitution of India and consequently, set aside the same and direct the 1st respondent to continue the present Managing Committee in Office.

Counsel for the Petitioner:MR.S.SHARAT KUMAR

Counsel for the Respondent No.1:Mr.S.M.SUBHANI (Standing Counsel)

The Court made the following :

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ORDER:

The petitioner, which is a managing committee of Anjuman Imdad-E-Islam Ahala Sunathul, Jamiya Majid, Mandapeta, files this Writ Petition initially on 26-07-2004 seeking a writ of Mandamus challenging the correctness of the proceedings dated 20-07-2004, whereunder the 1st respondent superceding the said committee asked the 2nd respondent herein to control the affairs of the mosque, as illegal.

2. Heard Sri S.Sharath Kumar, the learned Counsel for the petitioner and Sri S.M.Subhani, the learned Standing Counsel for the respondent No.1.

3. The case of the petitioner in brief is that the petitioner was constituted in the elections conducted on 11-11-2001 and since then it has been functioning without any complaint. Ultimately, the petitioner was constituted as per the proceedings dated 26-09-2003 for administering the affairs of the institution for a period of one year from 17-09-2001. However, having regard to the local rivalries and groups, the petitioner is not being permitted to function and now at the instance of the persons, who have, in fact, lost their election held on 11-11-2001, the impugned proceedings were passed superceding the committee. In fact, as on the date of the filing of the Writ Petition, it is stated by the petitioner that the said order was not served on him and he came to know only through the newspaper report, which was published in the local Eenadu newspaper dated 23-07-2004. It was alleged that though the petitioner has been rendering numerous services for the betterment of the institution and participating actively in its affairs by taking appropriate steps both against tenants and otherwsie, however, the Show Cause Notice was issued on 04-05-2004 on certain allegations for which the explanation was filed on 26-05-2004. The petitioner was also filed a detailed representation on 07-07-2004 pointing out the refusal of payment of rents by the tenants, which was acted upon and direction was given for conducting a spot inspection and ultimately report was submitted after visit by the Inspector. It was also pointed out that in regard to the allegations as made in the show cause notice, there is already a clean chit given to him and in spite of the same the impugned orders came to be passed. Hence, the Writ Petition.

4. Subsequently, the copy of the impugned order was served by the standing

counsel appearing on behalf of the respondents, whereupon, the petitioner has filed an application in W.P.M.P.No.17138 of 2004 seeking for amending the prayer in the Writ Petition with added grounds. Having regard to the submissions made across the bar, it is felt more desirable that such opportunity should be given. The W.P.M.P.No.17138 of 2004 is, accordingly, stands allowed.

5. The main submission made on behalf of the petitioner is that the impugned action is nothing but a rouse to treat that the committee which is duly constituted is does not function and the said action is only at the instance of the rival groups and therefore there is absolutely no bona fidies. This Court had initially granted orders of status quo as on the date as per the orders in W.P.M.P.No.16757 of 2004 dated 29-07-2004.

6. Subsequently, the respondents have filed a counter-affidavit. Hence, the matter was taken up for disposal finally at the request of both the learned Counsel. In the counter-affidavit filed by the respondents herein it is stated that having regard to the serious nature of allegations made in the complaint from the District Wakf Committee against the petitioner's committee regarding mismanagement of wakf institution, show cause notice was given on 04-05-2004 under Section 67(2) of the Wakf Act, 1995, which disclose that the petitioner has misappropriated Rs.35,000/- towards grant-in-aid for Wazoo Kahana; he received Rs.99,000/- from two tenants and used for his personal and kept in dark; he failed to collect Rs.1,60,280/- from the tenants; he terminated services of Pesh Imam without notice; he has been charge sheeted under Section 8(b) of A.P.Prohibition Act, in Crime No.88 of 1996, which was subsequently numbered as C.C.No.666 of 2000 on the file of the Special Judicial First Class Magistrate for Excise, Kakinand and the same is pending; he failed to operate the joint Account and operating account in single hand; and finally he failed to pay the salaries of the staff. The explanation filed by the petitioner on 26-05-2004 to the said show cause notice having been found not satisfactory. Therefore, the appropriate impugned action was taken, which is perfectly legal and valid. The allegation made by the petitioner that the impugned order was not served cannot be taken into consideration, because the petitioner himself was at Hyderabad and even the Secretary of the Managing Committee when sought to be served he refused to take the same. Therefore, the said allegation has absolutely no basis. Having regard to the nature of the allegations and nature of enquiry, no indulgence needs be shown on petitioner. Hence, the Writ Petition is liable to be dismissed.

7. Sri S.Sharath Kumar, the learned Counsel for the petitioner, seriously submitted that the entire impugned action is vitiated with several mala fidies and also at the instance of the local rival groups. Therefore, the impugned orders cannot be sustainable.

8. The learned Standing Counsel appearing for the respondent No.1 submits that in the circumstances, especially where such serious allegations made against the petitioner, the order of superceding need not be interdicted by this Court.

9. Considering the submissions made and also on perusal of the material, it is seen that there is no dispute to the fact that the petitioner committee has been duly constituted and functioning as such. On the allegations in a complaint received, the 1st respondent has taken recourse to the impugned action, which was preceded by a show cause notice and also the submission of explanation by the petitioner. It is the case of the petitioner that the said order was not served and it was served only in the course of the arguments in this Court, subsequent to filing of the Writ Petition and the petitioner has sought appropriate amendment to the relief. On a considered view it is seen that having regard to the nature of allegations and the same having to be enquired into, it is not necessary to go into the merits, especially in regard to the objections or pleas as raised on both sides at this juncture. The allegations made against the petitioner necessarily had to be enquired into in view of its very nature. The petitioner cannot avoid any such enquiry. However, the fact remains that the petitioner committee has been functioning all along and this Court has granted the orders of status-quo even before the order of supercession was served by the respondents herein. There cannot be any dispute in regard to the power vested with the 1st respondent herein under the aforesaid provisions of the Wakf Act to supercede the committee. Be that as it may, having regard to the fact that matter pertains to institution and its affairs, it is felt more desirable that an early enquiry be conducted and appropriate orders are passed finally rather than prolonging the matter at this stage.

10. In the circumstances, the Writ Petition is, accordingly, disposed of directing the 1st respondent herein to conduct an enquiry and pass orders in accordance with law, on merits, after giving notice and opportunity to the petitioner within a period of two months from the date of receipt of a copy of this order. It is needless to mention that the status quo orders, as granted by this Court shall continue in operation till the

completion thereof. However, the petitioner will not be entitled to deal in any manner in respect of the financial matters of the institution, till the completion of the enquiry. No costs.

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B.PRAKASH RAO, J.

Dated 16-08-2004.

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ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1. The A.P. State Wakf Board, Rep. by its Chief Executive Officer, Haj House, Public Garden Road, Nampally, Hyderabad.
2 Mr. Syed Saleem Basha, S/o. Late Superintendent, A.P. State Wakf Board, Haj House, Public Garden Road, Nampally, Hyderab

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